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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,

USA SECURITIES, LLC,

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

STANDARD DISCOVERY PLAN

Date of Hearing: April 17, 2008
Time of Hearing: 10:30 a.m.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

1 The USACM Liquidating Trust (the “USACM Trust”) and Los Valles Land &
2 Golf, LLC (“Los Valles”) request that the Court enter a discovery plan and scheduling
3 order in this matter.

4 **1. If the Court grants the Motion to Consolidate, USACM asks to postpone**
5 **setting a discovery plan:**

6 The USACM Trust filed Adv. Case No. 08-01058 against Los Valles and Dan S.
7 Palmer Jr. The USACM Trust has filed a motion that seeks to consolidate this matter with
8 the adversary proceeding [DE 5991]. Los Valles opposes consolidation with respect to
9 Mr. Palmer and has also moved to strike portions of the adversary complaint. The Court
10 will hear the motion to consolidate and the motion to strike on April 17, 2008.

11 If the Court grants the motion to consolidate, the USACM Trust would ask that the
12 Court postpone setting a discovery plan until after both defendants in the adversary
13 proceeding have answered. Los Valles was served and has filed a motion to strike.
14 Counsel for Los Valles has agreed to accept service on Mr. Palmer’s behalf and the
15 USACM Trust sent a copy of the summons and complaint to him on March 17, 2008.

16 If the Court denies the motion to consolidate, then USACM Trust is agreeable to
17 the discovery plan outlined below.

18 **2. Discovery Plan:**

19 _____ Request for waiver of requirement to prepare and file a formal
20 discovery plan. The parties certify that all discovery can be completed informally, without
21 the need of court intervention and in conformance of the Standard Discovery Plan, and
22 that the matter will be ready for trial within 120 days, or

23 X A discovery plan is needed or useful in this case. Check one:

24 _____ The parties agree to the standard discovery plan.

25 The first defendant answered or otherwise appeared on January 24, 2007. Discovery shall
26

1 be completed within _____ days, measured from the date the first defendant answered or
2 otherwise appeared. Discovery will close by _____.

3 X The parties jointly propose to the court the
4 attached discovery plan and scheduling order included below under Paragraph 8. (Use
5 Official Form 35 to the Federal Rules of Civil Procedure.)

6 _____ The parties cannot agree on a discovery plan and
7 scheduling order. The attached sets forth the parties' disagreements and reasons for each
8 party's position. (Use Official Form 35 of the Federal Rules of Civil Procedure.)
9 Complete parts 2 - 6.

10 **3. Nature of The Case:**

11 Los Valles has asserted a claim in excess of \$2 million against USA Commercial
12 Mortgage Company ("USACM") arising out of a series of agreements relating to USACM
13 arranging for a \$11,700,000 loan to Los Valles to finance a residential development
14 located in Los Angeles County, California. The dispute centers upon USACM's
15 collection, as well as its attempt to collect, certain charges from Los Valles, as well as
16 USACM's conduct in connection with an October 2004 payoff demand from Los Valles.

17 On November 9, 2006, Los Valles filed Proof of Claim No. 10725-01366, asserting
18 an unsecured nonpriority claim for "no less than \$2,000,000." The Los Valles Proof of
19 Claim is based upon five separate legal theories: (1) unlawful collection of a real estate
20 broker's fee pursuant to California Business and Professions Code § 10130; (2) willful
21 failure to timely deliver a payoff demand statement under California Civil Code § 2943
22 and Nevada Revised Statutes § 107 210; (3) intentional misrepresentation; (4) violation of
23 California consumer protection statutes; and (5) a claim for attorneys' fees.

24 The USACM Trust filed an Objection [DE 3076] to the Los Valles claim on March
25 13, 2007 and an Amended Objection [DE 4820] on September 20, 2007. The Amended
26 Objection disputes each theory asserted in the Los Valles Claim on factual and/or legal

1 grounds and disputes the Los Valles claimed damages. The Amended Objection also
2 asserts several affirmative defenses.

3 On October 15, 2007, Los Valles filed a response [DE 5017] to USACM's
4 Amended Objection.

5 **4. Jury Trials:**

6 A demand for a jury trial has not been made.

7 **5. Additional Pleadings:**

8 Are there any counterclaims, cross claims or amendments to the pleadings expected
9 to be filed?

10 The USACM Trust does not expect to amend its objection to allowance of claim.

11 The USACM Trust has filed an adversary proceeding against Los Valles and Dan
12 Palmer, Jr. The USACM Trust has moved to consolidated this objection with that
13 adversary proceeding [DE 5991.] Los Valles opposes consolidation with respect to Dan
14 Palmer. The Court will hear the motion to consolidate on April 17, 2008 at 10:30 a.m.
15 The USACM Trust may at some point seek to amend the pleadings filed in the adversary
16 proceeding.

17 **6. Settlement Conference:**

18 The parties attended a settlement conference on March 3, 2008, before Judge
19 Markell, but they were unable to reach a settlement.

20 **7. Trial:**

21 The parties believe that this case will be ready for a bench trial by November 3,
22 2008, and that the trial will last three days.

1 **8. All parties consent to this court entering final judgment.**

2 **9. JOINT REPORT OF PARTIES' PLANNING MEETING**

3 **A. Pursuant to Fed. R. Civ. P. 26(f), a Telephonic Meeting Was Held on**
4 **November 13, 2007 and April 14, 2008 and Was Attended by:**

5 Bruce Jacobs of Akin Gump Strauss Hauer & Feld, LLP for the claimant, Los
6 Valles Land & Golf, LLC plaintiff

7 John Hinderaker of Lewis and Roca, LLP for the debtor, the USACM Liquidating
8 Trust.

9 **B. Pre-discovery Disclosures.**

10 The parties have exchanged the information required by Fed. R. Civ. P. 26(a)(1).

11 **C. Discovery Plan.**

12 The parties jointly propose to the Court the following discovery plan:

13 Discovery will be needed on the following subjects: The factual basis for each of
14 Los Valles' five claims against USACM; the factual basis for Los Valles' alleged
15 damages; the facts and negotiations between USACM and Los Valles related to the
16 October 6, 2006 Letter Agreement; and the factual basis for any claim that the USACM
17 Trust may bring against Los Valles.

18 All non-expert discovery commenced in time to be completed by July 31, 2008.

19 The parties require until the end of July to complete discovery because they cannot
20 commence depositions until June 2, 2008 because of scheduling issues.

21 Maximum of 25 interrogatories by each party to any other party. Responses due 20
22 days after service.

23 Maximum of 50 requests for admission by each party to any other party.
24 Responses due 20 days after service.

25 Responses to requests for production of documents, electronically stored
26 information and things will be due 20 days after service.

Maximum of 5 depositions by Los Valles and 5 by the USACM Trust.

Each deposition limited to maximum of 4 hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

Opening Reports by August 7, 2008.

Rebuttal Expert Reports by September 5, 2008.

Supplementations under Rule 26(e) due September 19, 2008.

The parties agree that the disclosure or discovery of electronically stored information should be handled as follows:

Disclosure and discovery of electronically stored information: The parties are to preserve all electronically stored information that is relevant to this lawsuit or reasonably likely to be subject to discovery. If and when a party requests electronically stored information, the parties shall confer regarding the manner in which the producing party will disclose such information to the requesting party. If, after conferring, the parties cannot agree on the manner in which to disclose such information, the requesting party shall file a discovery motion.

D. Other Items.

The parties request a pretrial conference in late September/early October 2008.

The parties should be allowed until June 2, 2008, to join additional parties and to amend the pleadings.

All potentially dispositive motions should be filed by August 15, 2008.

The parties will again evaluate settlement on July 31, 2008.

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from the parties by October 3, 2008.

The Parties should have 7 days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

1 The case should be ready for a bench trial by November 3, 2008 and at this time
2 trial is expected to take approximately 3 days.

3 Dated: April 14, 2008

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5 **FELD, LLP**

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